



The Parker Ranch installation in Hawaii

Recovery Act: Davis-Bacon for Subgrant Recipients of EECBG and SEP

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- Quick Policy Background
- Implementation for grant sub-recipients
- Implementation for contractors
- Exercise: certified payroll review
- Q & A

QUICK POLICY BACKGROUND

- Section 1606: all laborers and mechanics employed by contractors and subcontractors **on projects funded directly by or assisted in whole or in part by and through the Federal Government** pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor
- In practice, this means that DBA applies to any projects involving construction that have any amount of EECBG or SEP funding

Definition of “Laborers and Mechanics”

- The term *laborer or mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, . . . The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.
- Thus DBA does not apply to energy auditors, engineers, designers, architects, consultants, etc.
- DBA also does not apply to the employees of municipal governments, even if they are performing laborer/mechanic work

No Requirement that the Project be a Public Building or Public Work

- The Recovery Act makes the DBA requirements applicable to all “projects funded directly by or assisted in whole or in part by the Federal Government. . .” There is no requirement under the Recovery Act that the project be a public building or public work. Thus Congress made the ARRA DBA requirements applicable to public buildings and other non-public buildings.

IMPLEMENTATION FOR GRANT SUB- RECIPIENTS AND CONTRACTORS

Summary of Sub-grant Recipient Responsibilities

- Flow down DBA language and Wage Determination in all RFP and contracting materials
- Receive weekly certified payrolls from contractors; review them for accuracy; pass them along to State Energy Office
- Visit worksites; primarily to interview workers and verify they were actually paid the amount on the certified payroll
- Work to correct any problems; bring in State Energy Office as necessary

Summary of Sub-grant Recipient Responsibilities: Timeline

RFP and Contracting process	After awarding a contract but before construction starts	During Construction	After Construction
<ul style="list-style-type: none"> Subgrantee incorporates wage determination and DBRA requirements into the information provided to bidders on the project Subgrantee incorporates wage determination and DBRA requirements into contracts signed for the project 	<ul style="list-style-type: none"> Good idea for subgrantee to convene a pre-construction conference with the contractor to discuss the implication that DBRA compliance has for the project. 	<ul style="list-style-type: none"> Contractor submits weekly certified payroll Subgrantee reviews weekly certified payroll and follows up on any mistakes. Once the payroll is correct, the subgrantee forwards the payroll to the State Energy Office. Subgrantee visits worksites. Subgrantee will interview the contractor's employees to ensure they are actually being paid the amount listed on the certified payroll. Let the State Energy Office know of any problems—both problems that you fix and those that need to be escalated because the contractor is not cooperative 	<ul style="list-style-type: none"> Records retention: subgrantees and contractors maintain relevant records for 3 years after project ends

- RFP materials
 - RFP materials should notify bidders that DBA applies.
 - Information provided to any and all bidders shall include the statement: "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts."
 - RFP materials should include the relevant DOL Wage Determination.
- Contract documents
 - Contracts between subgrantees and construction contractors should include the DBA language in the grant agreement between the State Energy Office and the subgrantee
 - Contracts between subgrantees and construction contractors should also include the relevant DOL Wage Determination

Selecting a Wage Determination

- There may be one attached to your grant agreement—if so, use that one
- If not, go to www.wdol.gov and select the appropriate WD for your county and construction type
- Include the WD in all RFP materials and contracts

Subgrantee Responsibilities: Flow Down DBA Language and Wage Determination (cont.)

<http://www.wdol.gov/dba.aspx#0>

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

Browse by [state/territory](#)

OR

By Selection criteria beginning with:

State:

County:

Construction Type: (Type of Construction Under DBA)

WD Number:

[Back](#)

View the latest [modifications and additions](#) to the Davis-Bacon Database.
View the [modifications or additions](#) to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.
View [Archived Wage Determinations](#)

Subgrantee Responsibilities: Flow Down DBA Language and Wage Determination (cont.)

General Decision Number: CT100012 07/30/2010 CT12

Superseded General Decision Number: CT20080012

State: Connecticut

Construction Type: Residential

County: New Haven County in Connecticut.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Modification Number	Publication Date
0	03/12/2010
1	05/07/2010
2	06/25/2010
3	07/02/2010
4	07/30/2010

ELEC0090-004 06/01/2010

Entire County excluding Beacon Falls, Middlebury, Milford, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury and Wolcott Townships

	Rates	Fringes
ELECTRICIAN.....	\$ 35.20	20.51

ELEC0488-009 06/01/2010

Beacon Falls, Middlebury, Milford, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury and Wolcott Townships

	Rates	Fringes
ELECTRICIAN.....	\$ 34.80	21.05

ENGIO478-006 04/05/2010

Contractor must pay the equivalent of \$35.20 + 20.51, or \$55.71. Can be any combo of cash + bona fide fringes.

- Any apprentice or trainee rate and classification must be part of a DOL-approved program.

Contractor Responsibilities: Summary

- Decide the appropriate job classification for each worker
- Pay employees at least the wage rates indicated in the Wage Determination in your contract
- Provide certified weekly payrolls to the other party in your contract
- Post the DOL's Davis-Bacon poster and the Wage Determination at your worksite
 - <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- Maintain payroll records for three years

- How do you determine the right job classification?
 - Contractor is responsible for determining what classifications they need
 - What do you do if no exact match?
 - They can try to break a job down into component parts (e.g. the HVAC mechanic might be spending some time doing boilermaker work and other time doing general laborer work)
 - They can seek a conformance, which ultimately gets routed through the DOE Contracting Officer

- Initiated by the Contractor
- May be necessary when the locality where the construction work is being performed has no classification for the specific work.
- What wage rate to propose?
 - Be reasonable, don't lowball. Don't go below lowest published rate for that county
 - If it is skilled labor, think through comparisons (e.g. is it close to an electrician skill level? Or more like a general laborer?)
- More info here: http://www.wdol.gov/db_confrmnce.aspx

Sample Conformance Request

AUTHORIZED FOR LOCAL REPRODUCTION

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX

☐ SERVICE CONTRACT

☒ CONSTRUCTION CONTRACT

OMB No.: 9000-0089

Expires: 04/30/2005

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

1. **TO:**

ADMINISTRATOR, Employment Standards Administration
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

2. **FROM:** (REPORTING OFFICE)

Department of Energy
National Energy Test Laboratory

3. CONTRACTOR

State of Arkansas - SEP Grant

4. DATE OF REQUEST

5. CONTRACT NUMBER

09-DOE-1234567

6. DATE BID OPENED (SEALED
BIDDING)

7. DATE OF AWARD

06/20/2009

8. DATE CONTRACT WORK
STARTED

08/02/2010

9. DATE OPTION EXERCISED (IF
APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

Rex Harris d/b/a Rex's HVAC Systems & Repair

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

Repair or replace HVAC systems in multi-family residential buildings over 4 stories

12. LOCATION (CITY, COUNTY AND STATE)

Piggott, Clay County, Arkansas

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: AR100127

DATED: 07/30/2010

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES;
AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)

(Use reverse or attach additional sheets, if necessary)

b. WAGE RATE(S)

c. FRINGE BENEFITS
PAYMENTS

HVAC Mechanic (Duct and System Installation only)
(Baxter County a rural county much like Clay County uses this rate for
HVAC Mechanic (duct and system installation).

10.80

0.40

10. SUBCONTRACTOR (IF ANY) Rex Harris d/b/a Rex's HVAC Systems & Repair		
11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED) Repair or replace HVAC systems in multi-family residential buildings over 4 stories		
12. LOCATION (CITY, COUNTY AND STATE) Piggott, Clay County, Arkansas		
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION NUMBER: <u>AR100127</u> DATED: <u>07/30/2010</u>		
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) <small>(Use reverse or attach additional sheets, if necessary)</small> HVAC Mechanic (Duct and System Installation only) (Baxter County a rural county much like Clay County uses this rate for HVAC Mechanic (duct and system installation).	b. WAGE RATE(S) 10.80	c. FRINGE BENEFITS PAYMENTS 0.40
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY) (Rex Harris)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE (State Energy Office)	
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))		
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.		
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.		
<small>(Send copies 1, 2, and 3 to Department of Labor)</small>		
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED

PREVIOUS EDITION IS USABLE

STANDARD FORM 1444 (REV. 12-2001)
 Prescribed by GSA-FAR (48 CFR) 53.222(f)

- Contractor provides weekly certified payrolls to subgrantee
- Subgrantee reviews payrolls for accuracy. Subgrantee will then visit worksites and interview workers to determine if workers were actually paid the amount in the certified payroll
- Subgrantee will notify contractor of any mistakes and ask for corrective action.
- Subgrantee should notify State Energy Office of any mistakes fixed (e.g. a payroll came in with an error, and we worked with the contractor to ensure \$50 of back wages were paid).
- Subgrantee should also notify SEO of any egregious issues or contractors who are not cooperative (and DOE would then get involved).

- <http://www.dol.gov/whd/forms/wh347instr.htm>
- 2 parts:
 - Payroll form: can use this form or any other that captures the same information
 - Certification statement: use this language exactly (so it's probably easiest to use the form itself)

Example Certified Payroll: the Payroll Part

U.S. DEPARTMENT OF
ENERGY

Energy Efficiency &
Renewable Energy

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

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(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐
Hale N. Hardee Construction Co., Inc.

ADDRESS
1 Easy Street, New York, NY

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO. **20** FOR WEEK ENDING **October 17, 2009** PROJECT AND LOCATION **1st at A Avenue** PROJECT OR CONTRACT NO. **6 - Story Office**

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g. LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITH-HOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				S	M	T	W	T	F	S				FICA	WITH- HOLDING TAX		OTHER	TOTAL DEDUCTIONS	
				6	7	8	9	10	11	12									
Anderson, Joseph		Carpenter	O		1	1	1	1	1		5	35.96	893.00	67.43	179.80	17.98		265.21	633.79
			S		8	8	8	8	8		40	17.98	893.00						
Bedwell, Thomas		Carpenter	O		1	1	1	1	1		5	20.03	819.35	61.45	163.87	16.39		341.71	477.64
			S		8	8	8	8	8		40	17.98	819.35						
Larson, Todd		Carpenter	O		1	1	1	1	1		5	20.03	634.15	47.56	126.83	12.69		187.08	447.07
			S		8	8	8	8	8		40	13.35	634.15						
												20							

Example: Payroll Certification Statement

Date **October 17, 2009**

I, **Hale N. Hardee** **President**
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by
Hale N. Hardee Construction Co., Inc. on the
6 - Story Office Building (Contractor or Subcontractor)

: that during the payroll period commencing on the
11 day of **October 2009**, and ending the **17** day of **October 2009**,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Hale N. Hardee Construction Co., Inc. from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 367; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- ☒ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Larson, Todd	\$4.63/HR paid to a fringe benefit plan

REMARKS:

NAME AND TITLE

Hale N. Hardee, President

SIGNATURE

Hale N. Hardee

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

- Compare payroll to wage determination
- Can you spot any mistakes or items for follow-up/clarification?
- Tips:
 - Is the correct wage determination being used?
 - Has the contractor paid the correct rate for the job classification?
 - Has the contractor paid fringe benefits appropriately?
 - Is the certification signed?
 - Check the math – does the number of hours of DB work correlate to the gross wages paid?
 - Are deductions appropriate?

- Once payroll has been reviewed (and, if necessary, corrected), subgrantees must pass along the payrolls to the State Energy Office
 - If the subgrantee is a unit of local government, the subgrantee may pass along an electronic copy (i.e. scanned copy) of the certified payroll to the SEO. The subgrantee would maintain the original copies according to the overall record retention requirements for the grant (basically for three years after project completion).
 - If the subgrantee is not a unit of local government, the subgrantee must pass along the original version of the certified payroll

- Employee Interviews—goal is to verify information on the certified payroll
 - No required form or format. Sample is here:
http://gc.energy.gov/documents/EMPLOYEE_INTERVIEW_RECORD.pdf
 - Information provided is confidential
 - Interview statements should contain:
 - Place and date of interview
 - Name and permanent address of employer/employee
 - Employment status, classification, and actual rate of pay
 - Alleged violations

- Non-compliant contractors:
 - Will have to pay any back wages to employees
 - May have to pay fines/penalties, including liquidated damages
 - May have to face debarment from federal contracting for 3 years
- Subgrantees who are fulfilling their responsibilities should not be overly worried
 - Main thing that could happen is if contractor is unable to pay back wages (e.g. contractor is bankrupt) subgrantee may be asked to pay
 - If subgrantee thinks contractor cannot or will not be able to pay back wages that are owed, withhold any remaining payment to the contract and notify the SEO immediately

Subgrantee Responsibilities: Reporting Requirements

- DOE must report to DOL semi-annually on DBA compliance
- State Energy Office will collect information from subgrantee
- Report is short and straightforward: number of investigations, number of complaints, results of the investigations, and any back pay owed
 - October 1, 2010 through March 31, 2011
 - DOE must submit report on April 29, 2011
 - April 1, 2011 through September 30, 2011
 - DOE must submit report on October 29, 2011
- State Energy Office will initiate data collection a few weeks before report due date

- Grantees and subgrantees must maintain DBA records pursuant to OMB Circular A-110/10 CFR 600.242. Even though the Department of Labor regulations provide the records are to be kept for 3 years from the end of the contract, the DOE grant award terms tell the grantees to follow 10 CFR 600.242 (by reference), **which requires the grantee to maintain all supporting documentation for 3 years after the submission of the final cost report - usually 90 days after the end of the Grant Project Period. Since contracts/sub-grants fall within the overall Grant Agreement Project Period, the recipient would need to maintain the DBA payroll records for the potentially longer period of the Grant award and not just 3 years after the contract/subgrant ends.**

Contractor Responsibilities: Records Retention Requirement

- Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:
 - Name, address, and Social Security number of each employee
 - Each employee's work classifications
 - Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
 - Daily and weekly numbers of hours worked
 - Deductions made
 - Actual wages paid
 - If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
 - If applicable, detailed information regarding approved apprenticeship or trainee programs

- http://www1.eere.energy.gov/wip/davis-bacon_act.html
 - Recordings of DBA training webinars
 - Key documents and reference materials, including Desk Guide to DBA
 - Searchable database of FAQs
- Subgrantees contact the State Energy Office with questions

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